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## Alaskan Bush Justice: Legal Centralism Confronts Social Science Research and Village Alaska [1982 revision]

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### **Summary**

This paper traces the history of the bush justice system in rural Alaska, describes the relationship between traditional Alaska Native dispute resolution mechanisms and the state criminal justice system, and analyzes bush justice research between 1970 and 1981 and its effects on state agency policies and changes in the rural justice system. Innovations by researchers were well-received by villagers and field-level professionals, but not by agency policymakers. Hence, most reforms made in the 1970s had vanished by the early 1980s. The author concludes that further reforms will be ineffective unless Alaska Natives are drawn into the decisionmaking process as co-equal players negotiating on legal process from positions of power.

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The paper as originally presented includes discussions of corrections and law enforcement in the North Slope Borough that were excluded from this revision. The paper as originally presented can be found at: <http://hdl.handle.net/11122/9750>.

Alaskan Bush Justice: Legal Centralism Confronts  
Social Science Research and Village Alaska

by

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## The Environment for Research

In 1970 the Chief Justice of the Alaska State Supreme Court sought to adjust the state justice process to the needs of village Alaska<sup>1</sup> through a process of team research by a lawyer and an anthropologist which he hoped would lead to an agenda for reform. Justice Boney spoke of reforms which acknowledged the local village role in the legal process. He influenced the conclusions of Alaska's first Bush Justice Conference that "the locus of decision making in the administration of justice in village Alaska must move closer to the village," and its calls for "greater Native participation at all levels of the administration of justice" (Alaska Judicial Council, Bush Justice Conference, 1970:2).

The conference stated that "strengthening of village councils is central to the administration of justice in remote Alaska" (Id:2).

Professional justice was also to be improved. Trials were to be held in more rural locations, police and judicial travel budgets were to be increased, and education and recruitment of Natives in each justice bureaucracy was to be accomplished.

It suggested that "(T)he cultural context and impact of judicial administration must be thoroughly understood by all involved in the system of bush justice" (Id:4).

Court arraignments were to be conducted in Native languages and bilingual attorneys or para-professionals were to be recruited (Id:6). That an act was committed pursuant to Native

custom was to be considered as a mitigating factor in sentencing (Id:6).

The University of Alaska was requested to establish an institute to train legal personnel in both rural and urban areas in Native culture and languages (Id:3). The University, state administration and judicial council were to initiate programs of research concerning such areas as the character and processes of village law-making, judicial administration and law enforcement" (Id:5).

This last recommendation is particularly important because it led to my invitation to join the University of Alaska.

These reforms of bush justice were in turn to be implanted in an environment hostile to local innovation or dispersal of power to villages.

The constitution established a centralized court system (with no pockets of local autonomy such as county courts); a Department of Public Safety; a Division of Corrections within the Department of Health and Social Services; a Department of Law; and a state Public Defender Agency. Each of the latter agencies were headed by appointees of the governor. These state agencies had some limited competition from incorporated cities and organized boroughs. But in bush Alaska, it is fair to say that they had free reign over the local level and quality of service.

State agency heads sat on the Governor's Commission for the Administration of Justice headed by Chief Justice Boney. State

law and order money was directed to state agencies not local communities.

Village Alaska had Native representation but no strong advocate for federal dollars.<sup>2</sup>

The era was marked by the conclusion of the Native land claims debate. The settlement resulted in a prolonged process of land selection and distribution of funds among regional corporations in Alaska. Native legislators did not focus upon bush justice issues in village Alaska. Regionalization was the byword of Native political organization (Conn and Garber, 1981).

With Boney's untimely death in 1972, the impetus for direction of the justice system and content passed back to the discrete departments charged with policing, prosecution, defense and corrections and their professional administration. Continuance of meetings of the Governor's Commission was for little more than a mutual division of the federal spoils.

Villages were to remain legal colonies, subject arbitrarily to either inadequate police assistance or, in other cases, gross overpolicing. Neither village autonomy nor professional service improved. The relationship between village and state law suffered.

For the researcher, then, an evaluation of his role in this process must include very serious professional soul searching. Did his emphasis upon cultural adaptation understate and conceal the political imperatives which dictated the allocation of

resources throughout the period? Did "cultural difference" provide the excuse for justice decision makers to avoid hard decisions within their own realm? Did some spurious allegiance to village autonomy and its local law provide a continuing justification for inadequate state intervention to deal with violent crime?

### **What is the bush justice system in Alaska?**

It is a constitutional scheme of rule making, law enforcement, adjudication, defense and correctional activity which feeds through separate and highly centralized bureaucratic channels from urban Alaska to small towns. From small towns fledgling governmental services flow to networks of rural villages. These 150 villages of 300 persons on the average are predominantly Eskimo or Indian. Village legal connections with the towns are formed in some instances by paraprofessional judges, police or ex-official bodies such as village councils who report some serious cases to state field operatives in towns.<sup>3</sup> More often connections are triggered by reports of serious crime and removal of offenders and victims to towns by the appropriate agencies.

In Eskimo village society all law jobs and institutions have been designated by whites. Villagers, however, implemented and developed them. Thus although the "state legal system" and the "village legal system" are both white creations from their inception, each has a differing ongoing creative core. No Eskimo person in Alaska would suggest that village justice systems were constructed to handle all matters serious and unserious; they are

components of the state system whether the state system chooses to acknowledge it or not.

Those with deepest involvement in matters of bush justice must be divided into three camps.

The first camp is that of the legal professionals. They may be divided into policy makers at the top and field operatives at the bottom. At the top of the supreme court is the chief justice, a man deeply concerned with the ideology of due process.<sup>4</sup> He is particularly concerned with the image of his court. His lieutenant, the administrator of the state court system, is concerned with the health and welfare of his own growing bureaucracy and its competence as measured by the legislature, by practicing attorneys and by high court judges. Their counterparts in the Department of Law are the attorney general and the chief prosecuting attorney. The chief public defender combines the ideological and administrative perspectives.

Field operatives represent the agency in town locations which serve as service centers. A single corrections officer in the town of Bethel, for example, provides juvenile intake and disposition, probation, parole and, presentence reports for convicted felons for a region about the size of the state of Oregon, with 57 villages and 29,000 persons. The town's public defender and assistant district attorney each have the same position within their own bureaucracy and the same village clientele.

The field operatives have direct contact with villages and their justice systems, both official and extraofficial. Their

mandate is to keep their agency's service record clean, "to keep the lid on." Although they have usually very clear perspectives of bush justice, their propensity to blow the whistle on inadequate service and lack of sufficient funds from their agency or from others must be weighed against career considerations.<sup>5</sup> They are not in a position to change the allocation of resources of their own agencies or of others. Discrete agencies are also not prepared to collaborate at the top though necessity may compel collaboration in the field. Thus in 1975 in Nome, it could be said that the justice system played basketball on Thursday nights. Each system agency views his service and village connections as separate from the other. Only the village views all contact from justice agencies as coming from a single source.

The second camp is comprised of consumers. In 1974 and in 1976 they have been given a chance to express their concerns to justice professionals through Bush Justice Conferences. More often, usually around election time, they have aired their complaints to visiting agency heads in what have been termed "dog and pony shows" (See Easely, 1973).

Those members of this village constituency nominated as magistrates, village police, or correctional aides are set apart from field professionals because they do not enjoy limited professional lines of communication which stretch from town to urban bureaucracies. Village magistrates and village police exist in a nether world, making loose connections between the power structures of state justice and village justice.



The researchers are in a third camp. They were called upon to study the relationships between the state and village justice processes. They also zeroed in on the relationships of Natives to one or both systems each from legal perspectives, historical perspectives, anthropological perspectives, but rarely from political perspectives. Over ten years they researched, tested and recommended solutions to policymaking professionals.

In short, the work of researchers tended to concentrate around the delivery of services to villages and the interplay of village and state legal process.

As with the paraprofessionals, researchers reported to both systems but had a power base in neither.<sup>6</sup> Outside of the justice bureaucracies they operated somewhat out of control of all key participants but had access to any and all.

### **The Early Years of The Relationship**

In Alaska village councils, locally elected bodies, have now had 60 years of experience in the business of dispute adjustment (See Conn and Hippler, 1973a) or 35 more than the state legal system. Teacher-missionaries introduced these institutions. Their intent appears to have been to use the councils to advance their own agenda: to suppress the manufacture of hootch, to seek out and punish sinners and to urge upon parents the discipline necessary to operate village schools in communities still geared to the rhythms of hunting and fishing.

Councils over time cut loose from teachers and found a place within the larger web of white and Eskimo social control.

In the Eskimo communities, representatives of leading families formed a consensus within councils. Village councils fit within the process of community and state law. Councils backstopped and extended dispute adjustment. Their early style reflected the classic approaches of conflict avoidance - conciliation, gossip, ostracism and counseling among Eskimos. But, as important, they were supported from the outset by white village residents, teacher-missionaries deputized under federal law, the board of elders in Presbyterian and Moravian communities, occasional resident U.S. Commissioners and nonresident marshalls, Coast Guard cutters and even a distant court system (Milan, 1964 and Case, 1978).

Councils were the last stop in a process of evolving interpersonal customary law ways and the first step in a process of Western intervention that could result in referral to a police and court process outside of the village.

Western legal intervention had made impossible (or at least more dangerous) killing or banishment as final steps in a customary legal process. However, to a certain extent it had replaced these ultimate steps with removal into its own legal process in a distant place at the request of village councils.

Councils were most often an Eskimo institution of last resort but even within its processes of case adjustment were opportunities to admit one's guilt, ask forgiveness and be reintegrated into the community. Orientation and not punishment was the usual result of the process. Two or three appearances before a council

could be anticipated before it sought to draw in outside police authority.

Intervention by marshall, Indian police, liquor suppression agents and later territorial police, while limited by geography and state resources, was sufficient in territorial days to reinforce the council when it responded punitively. By reacting to incipient conflict or to the seeds of later conflict, councils avoided confrontation with either villagers or with agents of the official legal system (See Conn and Hippler, 1975).

### **The Later Years**

A variety of factors destabilized the council as a mechanism for dispute adjustment in the years immediately following statehood (1959). In meetings with state officials, council presidents learned that state officials would not support bans on liquor possession or manufacture (Conn, 1981a). "Village rules" were distributed by district attorneys, rules easily transferable into state violations. Two factors made this arrangement unworkable. First, promised supportive intervention by the troopers when councils requested it was not forthcoming. In the Bethel region alone, for example, in 1963 a single trooper provided service to 57 villages.

Villages were informed that they were to handle matters on their own and notify the police only when violent felonies had occurred. Letters to police during the period demonstrate that detailed descriptions of repeated violence were often left unanswered.

A survey conducted by researchers and troopers in 55 villages in 1977 revealed that on the average it took three days for the troopers to respond to a request for assistance (Angell, 1981a). The head of the Department of Public Safety, when confronted with this data, suggested that trooper involvement in the survey had caused village officials to minimize the actual length of time necessary to respond. He suggested that seven days was a more likely figure (Nix interview, 1977).

Inadequate trooper response even after villagers have attempted (on the field operative's instructions) to deal with less serious problems, destroyed the credibility of village law within its own realm. That credibility was, in part, state determined.

Second, in the early 1970's drunken behavior in public or in private was decriminalized. Service centers such as Bethel became ready sources of wage opportunities and bootleg liquor. Youthful populations rose dramatically, partially as a result of improved health care, and populations shifted from villages more distant from towns to those within relatively close proximity to towns.

### **Impact on Council Justice in the 1970's**

Councils as institutions have continued to play a central role in dispute processing in more than a 100 villages without magistrates. Yet to continue that activity councils were forced to become less "council-like," by earlier definitions, and more court-like by magistrate terms.

Councils confronted a more persistent stream of conflicts of a magnitude and severity unlike the immediate past.

With external punitive intervention less reliable, many councils shifted from bodies of reconciliation to bodies which directed fines and other sanctions at offenders. This shift from council-like to court-like approach was never completely successful. Fines were not collectible. Official support for fining was verbal but never explicit. Young persons challenged council authority (See Conn, 1976).

In the late 1960's, the court system introduced appointed Native justices of the peace (called magistrates) into about 30 Native villages. Where this occurred, villages councils deferred to this official authority and refused further complaints (Conn and Hippler, 1973b). Yet because matters heard by councils were often pre-or sublegal in Western terms, because complainants did not wish to confront fellow villagers, and because village policing was unstable, transfer of authority did not induce a transfer of the legal activity. Most villages did not receive magistrates, and could not appoint them without court approval.

Reports from police indicated that by the mid-1970's eighty percent of their arrests still resulted in council and not court disposition.<sup>7</sup> In a 1977 survey of 55 villages a quarter of all matters processed as criminal law violations resulted in council or problem board disposition (Angell, 1979a). In other words, village police appended themselves to councils, as adjudicative

bodies for minor offenses despite the fact that for the judicial system, councils were illegal institutions.

The irony of the position of the village council by the early 1970's should not be overlooked. As an official matter, the state legal system viewed village council process as an anachronism, a fixture of law ways of a distant past. As an unofficial matter, field professionals armed with mandates from their superiors to carry out impossible tasks of representation, prosecution and law enforcement over distant villages were vocal in their support of what they perceived to be continuing examples of Eskimo justice.

Yet this very encouragement of village justice demanded that the village system shift from a preventative process, capable of anticipating problems, to one that reacted very much like Western systems. The balance of outside intervention with inside deliberation was lost and village councils found their council process mutated out of its original form as it was forced to handle both parts of the process.

When magistrates and village police were offered to villages through appointment and training, the issue was not best articulated as a conflict between law systems, Western and non-Western. Rather, the issue was whether villagers could adequately address their present problems with new Western resources inferior to the working arrangement between formal law and village law of earlier days. The earlier arrangement worked in part because there were fewer problems. But it also worked because it contained support-

ive elements. It allowed legal levels, one consensual, another punitive, to interact. But more than this, by circumstance if not by political intent, it placed in Eskimo hands the authority to draw in external force. Put baldly, Western police did not intercede unless called.

Yet under this new arrangement what appeared to be more de facto control of village affairs was less.

### **Village Efforts**

The record shows persistent attempts by villagers to construct their own system as a component of the state process. Villagers were told to turn back to "the old ways" and draw upon a village consensus for enforcement of village law. But the "old ways" were formed out of a coalition of white and Native authority. The "old way" did not contend with prepaid liquor orders by telephone, improved air and land transport and wage opportunities of a younger generation as demanding of their official legal rights as other Alaskans.

Villages requested assistance in the drafting of their own town statutes. They realized that some skilled professional advice was necessary in order to make the laws enforceable within the state system.

When ordinances were sent to Juneau to an agency constitutionally obligated to help towns and villages, they were filed away without comment.<sup>8</sup> Villages were left in a legal never-never land as troopers and state officials refused to apply

village ordinances. Even village magistrates scorned village ordinances.

What village justice systems have had to undertake has outstripped their capacity to deal with it pre-emptively. Problems have also overrun their capacity to deal with them in Western terms through policing, judging and jailing (See Angell, 1981a).

### **Professional Perspectives**

The reality of a relationship between white legal agents representative of first military, then territorial, then state authority to small villages has changed little, if at all, in more than a hundred years of contact (Conn, 1981b; Jennes, 1962; and Murton, 1965). What has changed are professional attitudes toward the relationship.

Professional policymakers fail to understand village justice as a component of their own justice system. They view village process as a separate reality from which they with lesser or greater capacity remove cases to be dealt with in the thorough-going process that they know to be the "real" justice system, real justice being a process of adversary justice leading to state corrections.

Professional operatives in towns understand the relevance of matters left to village justice. But, for them, these matters are simply problems happily left outside of the realm of their own professional caseload. "Progressive villages" or "villages which handle their own problems" are admired by town-based professionals out of relief more than out of respect (Nix and



Timbers interviews, 1973). Yet few would not concur that real justice as delivered would not be preferable if it could flood the villages.

What professionals fail to perceive is that the interplay of state and village justice must be nurtured and adapted to survive. For villagers engagement of the systems is an historical fact. They have sought collaboration on terms reflective of the stronger aspects of the village justice process and those of the state. This implies shared control of the process.

A working justice process has been the objective of the researchers and, they believe, the village.

Yet does this global objective translate readily into compartmental ideological and administrative considerations of separate justice agencies? Can it be achieved if the idealized goal of planners is a fully articulated western justice system, capable of providing checks and balances, capable of providing due process and law enforcement typical of urban Alaska and urban America whether or not that goal is feasible or desirable?

On what terms then could reforms of bush justice be made? Perspectives and interpretations of "improvement" vary as one isolates interested constituencies. Institutional perspectives and ideological perspectives guide professional judgment.

The administrator of the court system is said to have referred to bush Alaska as a "can of worms." Implantation of a centralized judicial system in farflung town and village Alaska

was problematic. Costs were high. Discovery of persons to fill positions was difficult.

After the state constitution went into effect, the only official judicial activity tolerated was through court personnel. Towns and villages without judges or magistrates could not officially appoint a judge or employ a council as court (Alaska State Constitution Art. 4 Sec 1, 1959).

From an administrator's perspective allocation of judicial resources presented several problems:

- (1) dangers of autonomy borne from distance, lack of supervision and lack of indoctrination into Western legal perspective;
- (2) dangers of community influence on decisions made appropriate to resolution in terms of higher law; and
- (3) problems of management and supervision.

Village magistrate activity displaced judicial activity if cases were heard by magistrates at defendant's request. It was not easily controlled.

Magistrates were appointed by presiding superior court judges of judicial districts who jealously guarded their authority from intrusions by central administration. The court's magistrate supervisor lacked the power to hire and fire magistrates as did villages affected.<sup>9</sup>

Yet for all of these problems, bush magistrates (along with village police) comprised the lion's share of Native participation in the justice system. With a single exception, there are

no Native judges or high administrators in any state justice bureaucracy (Alaska State Court System, 1981).

The professional bureaucratic perspective emphasized supervision and control from higher levels to lower levels. It was difficult if not impossible to establish a system of justice in smaller Native communities satisfactory to this objective.

The village perspective seemed to be a desire for control sufficient to deal with matters early and efficiently and to employ the professional justice system for support when necessary. It implied an autonomy which the centralized system rejected.

#### **Magistrates as Guardians of Due Process**

The court looks to its rural magistrates and Native court personnel for interpretation of Western meaning and values underlying instructions in Native languages in criminal and civil cases in rural Alaska.

Yet the Native magistrate's actual capacity to try cases, to advise clients and to reject overtures by police who might attempt to influence the justice process has been a matter of ongoing bureaucratic concern by the state court system in the past 10 years. Two advisory committees of lawyers headed by the chief justice mulled over the problems of that component (Second Magistrate Advisory Committee, 1979). Of primary concern was the challenge of authorizing persons with lay education to adjudicate cases in villages ill-equipped to sustain a judicial officer. Magistrates often lacked proper "facilities" (courtrooms and

jails) and support from police regularly hired.

The court's second magistrate advisory committee considered but then rejected ideas such as (1) village magistrates would accept guilty pleas only, (2) that representation would be afforded in each village case; or (3) that magistrates' cases would be subjected to special ongoing review (Second Magistrate Advisory Committee, 1978) because each would single out Native magistrates from non-Natives.

Researchers pointed out that these lay judges were poorly trained in Western law and operated in isolation of Western justice systems. The court responded by upgrading its internal training program. Yet what they could not create through training was the direct experience of adjudication or court business.

From an administrative point of view, the 28-odd Native magistrates represented a needless drain on resources. The administrators argued that magistrates did not generate caseloads sufficient to be in every village or even in those villages previously selected for magistrate posts. People did not bring many complaints to magistrates. More importantly, most villages lacked facilities and all lacked attorneys. Thus they pressed for these prerequisites to placement of further magistrates. These criteria, it was suggested, would automatically bar placement of magistrates in most Native villages. The criteria were adopted by the committee as advisory and not mandatory (Committee, 1979:2). Unofficially accepted by the court adminis-

tration, their application since 1977 has resulted in no new magistrate posts in 112 Native villages without courts and in removal of five former posts since the committee issued its recommendations in 1979.

To remove magistrates would leave what alternative? The court system has adamantly refused to recognize village council justice as an acceptable component of the process. It ignored a suggestion by researchers that councils act as lay assessors at the sentencing phase (Committee, 1978).

What else could be suggested? The presiding judge of the Fairbanks court suggested that superior court judges, freed from urban court calendars, be assigned to regular village circuits. The circuit proposal was drawn from some limited understanding of the Canadian scheme of judicial service (See Morrow, 1974). Yet what committee members failed to understand, was that the "flying courts" of Canada dealt with a tiny percentage of cases left unhandled by justices of the peace in most settlements. Maps were drawn for the circuits and the idea found its way into the committee's final recommendations. There the plan disappeared with other recommendations, never to reappear on budgetary requests and never to be adopted by the state court system.

The Canadian scheme did not speak to the issue which the court administrators so desired to define out of existence. On what terms would the state provide officially for the daily business of law in small villages?<sup>10</sup>

What the court has left in place by near-inaction is a

limited allocation of magistrates in 28 of 140 villages, officially prepared to adjudicate cases, but in fact capable of and positioned only to turn arrests into guilty pleas.

We researchers pointed out that magistrates displaced but did not actually replace village justice systems in Eskimo villages. We and Native organizations advocated and tested variant forms of dispute adjustment more reflective of small villages' needs and capacities ranging from mediation panels which might operate alongside a fining or adjudicative authority to councils or boards vested with the limited judicial authority which the magistrate possessed (See Case, 1977).

As will be seen, the court system toyed with the concept of alternative forms of dispute adjustment, following the first bush justice conference, but then rejected it explicitly as a court function (Second Magistrates Advisory Committee, 1979:19).

#### The Researchers' Perspective

As researchers, we viewed ourselves as legal culture brokers, prepared to make comprehensible, practical adjustments to both the village and state sides of the justice system.

Our primary target was not a law process as measured by either ideological Western considerations or perceived Native law ways, but what we viewed to be an amalgam of both systems with adjustments necessary on both sides.

Our focus was on the bottom of the system. Our goal was to improve the daily operation of law as reflected in perceived

village needs by developing methods for enhanced interaction between state and village processes as we had come to understand them. These methods were to be sustainable and acceptable to village consumers and justice policymakers and field operatives. We satisfied consumers and field operatives but not policymakers.

### **The Problem Board Experiment**

The problem board experiment was grounded in careful study of the village council process both historical and contemporary throughout the 75 villages which comprise Eskimo Alaska. Assessment of village councils through study of their records and on the scene investigations led to our proposal to the court to test the proposition that a non-adversarial mediation panel could be established in villages. It would deal with matters then deemed inappropriate for either modern councils engaged in fining and jailing extralegally or magistrates (Conn and Hippler, 1974a). In association with the Eskimo village of Emmonak we worked on the process. It was in fact a process of rediscovery since Emmonak had only recently delegated its dispute adjustment to village police and a magistrate. The state had provided these Western law figures with a portable "holding facility" (jail).

The council had been able to drop its role as fining and jailing council. It had done this with some relief.

Villagers recognized that an element of the earlier process was missing. The magistrate spoke of the family counseling she was called upon to undertake. She desired something like the old council to take up this activity. Problems with juveniles and

other problems not clearly legal were mentioned. These were reflective of disputes heard by the village council.

With the village we devised what we called conciliation boards (drawing upon literature on village complaint boards in Ceylon). Villagers changed the name to problem boards. Villagers selected persons capable of problem solving, young and old, all Yupik speaking. They rejected the village priest when he volunteered.

The researchers determined that voluntary conciliation under Alaska law could be used as an alternative to prosecution for misdemeanors in most cases. They emphasized that the board would not and could not fine or jail persons. This would be left up to the magistrate (Conn and Hippler, 1974b).

The village developed the concept on its own. We had anticipated that matters would flow naturally from police to the magistrate and then be diverted by her to the problem board. In fact, what occurred was that matters moved directly and independently to the board (Conn and Hippler, 1975).

The problem board during its test phase dealt with matters which did not have clear legal remedies. These often involved situations involving alcohol which, if left uncounseled, were expected to result in violence.

For example, the board counseled A who gave liquor to B, causing family chaos. It counseled C who teased D for using welfare money to play bingo. When E, a teacher aide, kicked F, a



student, it drew E and G (his parent) together to work out a compromise. It dealt with difficult family problems involving drinking, wife beating and child abuse. Juvenile matters were often considered.

In the main, it anticipated violence. It had no power to fine or jail but could refer (and be referred) cases to and from the magistrate and the police.

### **The Court Experiment with Problem Boards**

When the model became an experimental "program" within the court system, the court personnel in charge selected test villages with little concern for institutional relationships with councils or magistrates.

While the problem board provided a mechanism for Native language speakers of all educational backgrounds to participate, only some villages were given to understand that one's skills at negotiation and conciliation and not youth and education were primary criteria. Others selected callow untrained youth for their boards.

Court personnel did not feel comfortable with village experience at dispute adjustment. They held a workshop for problem board members at an urban resort and had members of the American Arbitration Association employ models of conciliation drawn from labor, prison and other urban settings to teach the Eskimos how to resolve disputes.

Some test villages on their own grafted the board into their

processes with varying degrees of success. In village X near Bethel the board found a niche between the police and now-fining and jailing council (Conn, 1975b). Others saw the problem board as a weak substitute for either a magistrate or council.

The court hired an attorney and anthropologist to evaluate the boards. Although the report was favorable to those boards which had been active, it stressed the limited number of matters heard (Marguez and Serdahely, 1977) and not problems avoided by board activity.

The court's response was to end its association with the experiment. From its perspective, the boards had failed because they had not replaced either magistrates or extra-legal councils which fined or jailed when magistrates or outside assistance was not available.

Although the court disassociated itself from the project, a 55 village survey two years later discovered three of the six problem boards established were still in operation (Angell, 1979b).

### **Paralegals**

Unlike the new, urban private law legal assistants who have evolved into a discrete professional category by taking upon themselves a variety of lawyer's tasks, we viewed rural paralegals located in towns and villages as capable of performing activities not then undertaken by either professionals or members of the village justice systems (Conn and Hippler, 1973b; Conn, 1974).

The town paralegal's work was to combine town and village justice. By moving out from the town to villages where crimes had occurred, the rural paralegal would investigate and report back to the professional those social facts (as well as legal facts) overlooked by police. The police report had almost exclusive bearing on legal decisions, such as bail, screening, charges, case organization and disposition. No longer would the professional have to depend on a police report or on conventional wisdom among field professionals to evaluate his case with an eye toward its impact on the real community affected.

Our belief in village paralegals stemmed from several considerations. First, we had recognized and reported on the dependence of the rural justice process upon paralegals in a variety of village roles (Conn and Hippler, 1973b). Second, we were convinced that the state legal process would not be introduced in village Alaska with any balanced concern for the integrity of either the Western process or understanding of the village law process, its strengths and its weaknesses. We perceived that, at best, state justice agencies would make village connections with a magistrate and a policeman. The screening function so essential to the integrity of both systems, carried on previously by the council, or left to a village policeman would be ignored or left to chance (Conn, 1975a). Professionalization would increase the tendency to intervene in village matters without concern for the propriety of that intervention on the single dispute or on the village law process.

## Projects Accomplished and Their Bureaucratic Response

In the years that followed we were able to test the proposition of the town based paralegal who worked for either a district attorney or public defender. A training-tutorial mechanism was established in both Nome and Bethel.

Bush professionals, especially prosecutors, remarked that their professional collaboration with villages were enhanced. Trainees became serious members of the rural process.

Yet in this instance as in many others where plans proposed or actually implemented at the town and village level received strong support from field professionals and village residents alike, reaction from urban bureaucracies was indifferent or hostile.

LEAA representatives from Seattle questioned the use of \$100,000 to underwrite the establishment of regional training programs whose end result was apparently four new paraprofessionals. Their concern was sufficient to induce the state Criminal Justice Planning Agency in Juneau to ignore the project.

The state attorney general had promised in writing to budget permanent positions for successful trainees. He attempted to renege on his promise. Only the threat of newspaper exposure by the Bethel trainee saved his job. He was the only Native member of the rural Department of Law.

A paralegal trainee with the Public Defender Agency also received high marks. Yet when the agency was in need of a second

town attorney, she was encouraged to resign. She became a magistrate.

The Alaska Division of Personnel unilaterally defined paralegal positions and established testing procedures. No provision was made for rural job requirements (including language competence). The district attorney's paralegal failed the test.

### **Village Paralegals**

The Alaska Legal Services Corporation established paralegal positions in Native villages on Alaska's North Slope. These trainees were educated to discover and investigate Western law problems and to channel cases into the state process and back into the village realm.

Yet, when Alaska Federation of Natives funding from its federal CETA program disappeared, the village paralegals lost their positions, becoming more in a long line of Native men and women "trained into oblivion."

What do these experiments suggest about rural justice? It would appear that no experiment, however well attuned to village needs or cultural values, however well-received by villagers and however useful to field operatives and their limited resources will succeed without overcoming priorities both ideological and institutional which are more important than a rural justice system that works.

### **The Present**

A 1977 study of 55 villages indicates that the carnage of

village Alaska is now truly impressive with murder, rape and violent crime rates two and three times the state average and many times those of the nation (Angell, 1981a).<sup>11</sup>

Village councils persevere in 25 percent of the sample surveyed, skewed in fact to favor villages with magistrate service (Angell, 1981a). Villages depend upon outside police service or service of constables who act as liaisons to state troopers. Village control has been weakened and not strengthened.

The court system has disavowed rural trials where facilities are inadequate to house personnel (Supreme Court rule 18-1). It has disavowed experiments with alternative forms of dispute resolution. It has not acted upon plans proposed to it to attempt circuit riding. It trained and then forgot court interpreters (See Annual Report, Alaska State Court System, 1981).<sup>12</sup>

When its developed in-house research organ discovered that Natives in urban courts receive longer prison terms for non-violent offenses (Alaska Judicial Council, 1979), its judges attacked the problem by bringing up to the level of Natives, non-Native's sentences and not by encouraging correctional alternatives (Alaska Judicial Council, 1980).<sup>13</sup>

Magistrates placed in earlier days exist as curious anachronisms in rural villages, hearing fewer cases than councils did in their extra-legal state or even than the problem boards rejected by the court (Alaska State Court System, 1981).

Paralegals trained to work with bush district attorneys and

public defenders have been forced to resign by their bureaucracies even in the face of support by field personnel. The state personnel department has developed a test for such state positions which ignores language and job competence and emphasizes skills in math competence.

The Department of Public Safety has received funds to place village police in villages along with detention systems, creating a partial Western system.<sup>14</sup>

The Division of Corrections has provided no new correctional personnel to rural Alaska in ten years. Its dubious contribution has been to make old town jails (in Bethel and Nome) over into modern town jails.

Since police are more mobile than other components of the system, and more receptive to bush service, this means construction of law systems that could make of villages "closed institutions" with guards and cells (Goffman, 1961).

We as researchers, fascinated both with cultural pluralism and committed to research leading to reform, must search our souls and consider whether or not the fruit of our labor has resulted in a legal process acceptable to any standard of justice or to none at all. Those of us who are lawyers first and anthropologists second must consider whether we should steer away from research and lend our skills to law reform and political pressure and not to adaptation of the legal process and roles to fit small village situations.

Were researchers deceived or did they allow themselves to be deceived? Were they blind to overriding political considerations that made of "cultural relevance" a convenient excuse for bureaucracies to employ unless or until they were prepared to establish a partial copy of their system in village Alaska, a system unacceptable by either state or village standards?

We who are infatuated with the opportunities for redefining a state law process to benefit an environment marked by cultural pluralism may find our work manipulated by those who underwrite it and apparently embrace it. From our global perspective should we not be impressed by the political imperatives that govern the entire process of bush justice? Chief among these is a battle for control of resources and populations which relinquishes none of that control to indigenous minorities on any terms without a fight.

In Alaska, for example, it must be asked whether state authorities want village Alaska to survive. Is it not likely that state authorities would prefer an in-migration of Natives into its cities, that in 1991 Natives sell their shares of land claims awards and rest easily on their dividends in Anchorage condominiums?

Destabilization of village life may in the end be desired over improved service. Despite the historical adaptation of Western law process to changing social and economic needs, present policymakers and field operatives believe that the systems in which they function are a kind of evolutionary by-product, natural



and appropriate to all places and persons within the American political domain.

Though we may have scholars and historians who decry the phenomenon, is it not the underlying message of Alaska legal development that the consumers and their problems must fit the process and not the converse (See Friedman, 1973)?

The force of legal assimilation is the dominant force and adaptations in the name of cultural imperatives are mere pauses (or worse than this, excuses) which conceal a longer term trend.

As researchers, we in Alaska have tinkered with the system. We have listened and attempted to innovate within the system. What we did not accomplish was to draw Natives into the process as players, capable of negotiating change, possssing power and ultimately manipulating the system as co- or near- equals to other players.

Manipulation and partial control of the system does not mean participation in bush conferences, seats on advisory committees or even membership in lower ranks of justice or police bureaucracies. It means negotiating on legal process from positions of power.

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### Footnotes

<sup>1</sup> In the 566,000 square mile state of Alaska, half of the population live in towns and villages usually accessible only by river, sea or air. Within the latter rural population are 55,000 Indians, Eskimos and Aleuts who reside in about 140 villages with populations from 25 to 700 persons and 300 persons on average. Another half dozen Native towns have populations from 1,500 to 3,000 persons. "Bush justice" is the Alaskan term for legal process which affects these predominantly Native villages and towns.

<sup>2</sup> Criminal Justice Planner Butch Schwartz reported that only 10.8 percent of Alaska's LEAA block grants and 11.1 of all LEAA funds directly benefited bush areas. Eighty percent of this amount went to construct five jails and to police programs. Schwartz, 1973:4. Angell (1981) reports that while small white communities are isolated for purposes of data collection in police statistics, village Alaska is included in a catchall category. Nearly all white communities have a judicial officer.

<sup>3</sup> There are at least 112 small predominantly Native Alaskan cities (termed "Native villages") without resident state judicial officers. John Angell (1981) reports that only half of about 55 villages surveyed had even a part time policeman.

<sup>4</sup> Said the State Supreme Court in Gregory v. State (1976), "We. . . recognize that the trial court is obligated to be certain that each citizen, when involved in a criminal matter, is aware of the various rights guaranteed him by the Alaska and

United States Constitution." To this was footnoted the following:

"The Anglo-American system of justice differs substantially from the traditional Indian, Eskimo and Aleut systems, which pre-dated Western cultures by hundreds of years. The cultural difficulties experienced by many of the Alaska Natives as the contemporary Anglo-American institutions reach out to the bush communities require that the State legal system use extreme care in cases of this nature. Therefore, in those areas where a substantial portion of the populations consists of Native Alaskans, we urge the administrative office of the court system to develop bilingual explanations of basic rights for those who appear in criminal proceedings so that all citizens are clearly aware of their constitutional rights." Gregory at p. 380.

5 Of course differing discoveries by researchers or journalists or complaints lodged in higher courts had differing impacts on state bureaucracies.

For example, the Department of Public Safety actively supported research which discovered that violent crimes had overrun limited village and state resources. Its desire was to shift resources from urban areas (where they competed with urban police) to rural sectors. Village police were taken under the wing of the Department of Public Safety (and even funded in 1981 by them) as useful aides capable of dealing with minor drunken behavior without usurping primary police activities when major crime occurred.

6 Annotated descriptions of twenty articles, books, and papers written by Conn on rural justice appear in Donna L. Kydd, Ed., Towards A Legal Education and Information Program for Natives, Native Law Center, University of Saskatchewan, Saskatoon, Canada, 1979.

7 "During . . . (1972) the Village Policemen handled ten felony cases, 418 misdemeanors, and numerous noncriminal complaints. Seven of the felonies resulted in court action and 128 of the misdemeanors resulted in court action. One hundred and fifty-one of the misdemeanors were handled by the Village Policemen without court or Council action." (Village Police Training Annual Report, 1972, p. 1.)

As the project director described it in presenting other statistics for the year which showed court action on 63 cases and council action on 171, "[They] also illustrate a unique relationship of two branches of government within the Criminal Justice system." (W. Nix, Subgrantee Professional Report, April 11, 1972, p. 2.) The report noted, "the council has levied \$1,835.00 in fines, and 38 days of jail time. In almost every case, days of work for the village satisfied council sentences."

8 In 1973, the Department of Law passed over protest passages of a book on formation of a second class city to be used by many villages. The book stated that councils could fine or jail persons for violation of local ordinances if the offender agreed to the punishment. See What's a Second Class City?, pp. 2-3, Cooperative Extension Service, University of Alaska in cooperation with the Department of Community and Regional Affairs, State of Alaska, 1972.

9 When, for example, it was discovered by the Alaska Federation of Natives that the Dillingham magistrate was a racist missionary who demanded that Natives swear off drink, who per-

suaed them not to request an attorney and who refused to visit surrounding villages, the court could do nothing. His refusal to send in documentation of his cases also prompted no disciplinary action.

Ironically when magistrate A retired and was replaced by B, a legal services attorney, B was fired by the presiding judge for living with a mate in an unmarried state. The supreme court upheld the presiding judge.

10 Angell (1981) estimates that in villages he surveyed, legal professionals, other than troopers, appeared once a year or less. His conclusions seem to be reflected in an evaluation by village officials of state government agents. See Angell's chart reproduced as Appendix 1.

11 See Appendix 2.

12 Alaska Native adult males comprised 32.2 percent of the state jail population in 1980. Source: Frank Sauser, State Division of Corrections. The Native population (average age 16) comprised 16 percent of the population.

13 See Appendix 3.



PUBLIC OFFICIALS ASSESSMENTS OF  
QUALITY OF JUSTICE AND SELECTED PUBLIC SERVICES

	GOOD		OK		NEEDS IMPROV.		INADE- QUATE		NO SERVICE		N.R./ DON'T KNOW	
	#	%	#	%	#	%	#	%	#	%	#	%
Village Police	7	13.7	6	11.8	20	39.2	5	9.8	13	25.5		
AST	13	25.5	12	23.5	14	27.5	10	19.6	1	2.0	1	2.0
A F & W	7	13.7	6	11.8	17	33.3	13	25.5	4	7.8	4	7.8
Magistrates	14	27.5	7	13.7	8	15.7	3	5.9	14	27.5	5	9.8
Legal Services	8	15.7	10	19.6	7	13.7	7	13.7	14	27.5	5	9.8
Prosecutor	3	5.9	11	21.6	9	17.6	5	9.8	11	21.6	12	23.5
Defense Services	4	7.8	9	17.6	3	5.9	4	7.8	20	39.2	11	21.6
Probation/Parole	8	15.7	8	15.7	7	13.7	8	15.7	12	23.5	8	15.8
Local Jail	2	3.9	3	5.9	11	21.6	9	17.9	22	43.1	4	7.8
Mental Health	4	7.8	3	5.9	6	11.8	4	7.8	29	56.9	5	9.8
Medical Services	15	29.4	11	21.6	17	33.3	4	7.8	2	3.9	2	3.9
State Jail	6	11.8	13	25.5	2	3.9	2	3.9	16	31.4	12	23.5
Educational Services	22	43.1	9	17.6	18	35.3	2	3.9	0	0	0	0
Fire	0	0	3	5.9	19	37.3	9	17.6	19	37.3	1	2.0
Welfare, Unempl.	10	19.6	16	31.4	13	25.5	6	11.8	2	3.9	4	7.8
Youth Services	0	0	1	2.0	7	13.7	13	25.5	28	54.9	2	4.0

APPENDIX 1

Source: Angell, John E. (1981) Public Safety in the Justice System in Alaskan Native Villages, page 39.

## APPENDIX 2

### COMPARISON OF ALASKA VILLAGES, ALASKA STATEWIDE, AND UNITED STATES CRIME RATES

CATEGORY OF CRIME	RATES*		
	ALASKA VILLAGES	ALASKA STATEWIDE	UNITED STATES
Homicide	28.4	10.9	8.8
Rape	99.2	50.3	26.4
Robbery	127.6	96.5	195.8
Aggravated Assault	326.0	286.5	228.6
Burglary	936.8	1310.2	1439.4
Vehicle Theft	446.5	3272.6	2921.3
Simple Assault	354.3	783.7	446.1

\*Per 100,000 population in 1977.

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Source: Angell, John E. (1981) Public Safety in the Justice System in Alaskan Native Villages, page 27.

# APPENDIX 3

## STATEWIDE JUVENILE ARREST RATE PER 100,000 INDIVIDUALS

### 1978 STATEWIDE COUNT

	<u>White</u>	<u>Black</u>	<u>American Indian</u>	<u>Other</u>	<u>Total</u>
Burglary	368	12	98	67	545
Larceny	1,361	85	304	43	1,793
Drug Abuse	419	15	57	19	510
Liquor Laws	403	3	308	183	897
All Other Offenses	230	7	67	15	319
Curfew & Loitering	173	2	32	19	226
All Crimes	3,998	149	1,300	500	5,947

### 1978 STATEWIDE ARREST RATE PER 100,000 INDIVIDUALS

	<u>White</u>	<u>Black</u>	<u>American Indian</u>	<u>Other</u>	<u>Total</u>
Burglary	245.7	212.6	951.8	275.7	286.9
Larceny	908.9	1,506.5	2,952.6	176.9	943.8
Drug Abuse	279.8	265.8	553.6	78.2	268.4
Liquor Laws	269.1	53.1	2,991.4	753.2	472.2
All Other Offenses	153.6	12.4	650.7	61.7	167.9
Curfew & Loitering	115.5	35.4	310.8	78.2	118.9
All Crimes	2,670.1	2,640.9	12,626.3	2,057.8	3,130.5
<u>Base Population</u>	149,735	5,642	10,297	24,297	189,970

Source: Bayley, Bruce, et al (1980) A Statistical Analysis of Discrimination in the Alaska Criminal Justice System. Vancouver, Washington: Cascade Research Center.

## **Appendices (Accessible)**

*Note, 23 Jan 2019:* These appendices duplicate the content of the tables included in the original Appendix 1, Appendix 2, and Appendix 3, but have been formatted to make them accessible for users of screen readers.

## Appendix 1.

### PUBLIC OFFICIALS ASSESSMENTS OF QUALITY OF JUSTICE AND SELECTED PUBLIC SERVICES

	GOOD		OK		NEEDS IMPROV.		INADEQUATE		NO SERVICE		N.R./DON'T KNOW	
	#	%	#	%	#	%	#	%	#	%	#	%
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